



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

JRE
Docket No: 6540-00
1 November 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 26 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 1 July 1972. You were treated on numerous occasions for middle and outer ear infections during your enlistment, and on one occasion for lower back pain, but your ability to perform your duties was not adversely affected by those conditions. Your final evaluation report, which covers the 1 March-10 June 1975 period contains favorable marks and laudatory comments, and no indication that you were unfit for duty. You underwent a pre-separation physical examination on 18 June 1975, and were found physically qualified for release from active duty. No disqualifying defects were noted by the examining physician, and none were disclosed by you, despite the fact that you were admonished to disclose any condition you felt might render you unfit for duty. You were released from active duty on 19 June 1975, and assigned a reenlistment code of RE-1, to indicate that you were eligible and recommended for reenlistment. On 17 October 1975, the Veterans Administration (VA) awarded your ratings of 10% for mild lumbosacral strain, acute, mild; 0% ratings for residuals of otitis media and a scar on your left patella. On 22 June 1976, the Chief, Bureau of Medicine and Surgery, determined that you were not physically qualified for further service in the Naval Reserve because of recurrent low back pain.

The Board noted that in order for you to qualify for disability retirement or separation from the Navy, you must demonstrate that you were unfit for duty when released from active duty in 1975. As indicated above, you were considered fit for duty at that time. The fact that the VA awarded you service connection and a 10% rating for mild lumbosacral strain several months later is not probative or error or injustice in your case, because the VA makes such awards without regard to the issue of fitness for military duty. In addition, the available records indicate that the back pain you had experienced while on active duty had resolved, and that you developed back pain on or about 14 July 1975, after you were released from active duty, while lifting. The subsequent determination that you were not physically qualified for service in the Naval Reserve does not establish that you were unfit for service almost one year earlier. The multiple increases in your disability rating and the award of service connection for additional conditions in later years are immaterial because they were based on changes in your condition which occurred following your release from active duty, and on regulations which are not applicable to the Department of the Navy. The Board also noted that the form letter from the Judge Advocate General which you submitted in support of your application has no relevance to your case, because you received an honorable discharge, and were not discharged for civilian misconduct.

In view of the foregoing, your application has been denied. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request. The Board did not consider your request for amendment of your DD Form 214, because you have not exhausted an available administrative remedy by submitting your request to the Chief of Naval Personnel.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director